In the Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 152.

DE LAMAR'S NEVADA GOLD MINING COMPANY, Plaintiff in Error,

vs.

JAMES NESBITT, Defendant in Error.

MOTION OF THE DEFENDANT IN ERROR TO DISMISS THE WRIT OF ERROR.

James Nesbitt, the defendant in error, moves the Court to dismiss the writ of error herein for the want of jurisdiction in this Court, because the plaintiff in error brings itself within none of the provisions of Section 709 of the Revised Statutes of the United States.

In support of this motion the defendant in error shows that this is a case brought to this Court by writ of error to the Supreme Court of Nevada to reverse a decree rendered by that Court in favor of the defendant in error sustaining the trial court and against the plaintiff in error.

Defendant in error submits that the writ of error herein should be dismissed because the decision of the State court was based upon the statutes of the State relating to its own system of jurisprudence and general jurisprudence and will not be reviewed by this Court; and because the plaintiff in error claimed no rights under acts of Congress of November 3, 1893, and July 18, 1894; and be-

sides, the validity of the statutes was upheld, and further, because it was not intended to give this Court the power to revise the decision of a State court in a controversy between two of her own citizens claiming under the same act of Congress.

In support of this motion and a part thereof, the defendant in error submits a brief setting forth a statement of the case and the points involved, both of law and fact, with a reference to the page of the record and the authorities bearing thereon.

WALTER A. JOHNSTON,

Attorney for Defendant in Error.

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ON MOTION TO DISMISS WRIT OF ERROR.

DEFENDANT'S BRIEF.

STATEMENT OF THE CASE.

This is an action brought by the defendant in error, upon a protest and adverse claim, against one William Davidson as an applicant for a patent from the Government of the United States, to certain mining ground designated and described as the "Sleeper" mine and mining claim, which is claimed to have been located on the 1st day of January, A. D. 1895.

The defendant in error bases his protest and adverse claim upon the "Fraction" mine and mining claim, which was located on the 15th day of May, A. D. 1892, by A. Borth, one of his present co-owners, and Stevens and De Beam, whose interests he and his other co-owner, George Nesbitt, have acquired by purchase at judicial sales under the laws of the State.

Pending the trial of the case, and prior to his transfer to the present plaintiff in error, the said Davidson made and verified an amended or supplemental answer, and asked leave to file the same, which was denied, in which he claimed title to the ground in dispute by virtue of a new location, made pending the trial, and in which he denied the validity of the "Sleeper" location, upon which he had applied for a patent. This answer, although not permitted to be filed, was introduced in evidence by the defendant in error. (Record, p. 9.)

On trial in the State District Court a judgment was rendered for plaintiff—defendant in error. On appeal to the State Supreme Court, this judgment was affirmed, and a petition for a rehearing denied, and a petition for a writ of error denied by the Chief Justice of the State Supreme Court. (Record, p. 89.)

ARGUMENT.

This court has no jurisdiction, and the writ of error should be dismissed.

The plaintiff in error brings itself within none of the provisions of Sec. 709 of the Revised Statutes of the United States. (1.) The validity of no treaty, nor statute of the United States, nor any authority exercised under the United States, was drawn in question in the State Courts.

(2.) The validity of no statute of, nor authority exercised under the State of Nevada, on account of their being repugnant to the Constitution, treaties, or laws of the United States, was drawn in question in said State Courts.

(3.) *a.* The only title, right, privilege, or immunity set up or claimed by the plaintiff in error or its grantor, William Davidson, was the right to purchase certain mineral ground from the Government of the United States under the general mining laws thereof; and the said Davidson,

by his verified answer which he sought to file, as hereinbefore stated, denies that he had such right. Whatever right he had, however, depended upon *evidence alone* and not upon the construction of any statute, and this court will not examine the evidence on a writ of error.

Mrs. Lillian W. Egan and husband, plaintiffs in error, *vs.* A. Hart, H. B. Richardson, and F. M. Kerr, decided in this court February 1, 1897.

165 U. S., 188, and cases cited, and also Williams *vs.* Norris, 12 Wheat., 116.

b. The only statute of the United States, the construction of which was brought to the attention of the State courts, was the Act of Congress of July 18, 1894.

U. S. Statutes at Large, 1893–94, p. 114.

The plaintiff in error claimed no rights under this statute, and besides the validity of the statute was upheld by the State Court.

(4.) The decision of the State Court was based entirely upon the statutes of the State relating to its own system of jurisprudence and general rules of jurisprudence, and, therefore, will not be reviewed by this court.

See

Decisions of the Supreme Court of the State. (Record, p. 84.)

And

W. P. Sayward, plaintiff in error, *vs.* Arthur A. Denny *et al.*, executors. Decided in this court May 6, 1895, 158 U. S., 180.

It is, therefore, respectfully submitted that the writ of error in this case should be dismissed at the cost of the plaintiff in error.

WALTER A. JOHNSTON,

Attorney for Defendant in Error.